



1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by Plaintiff PETER  
3 ENGLANDER in the public interest of the citizens of the State of California to enforce the  
4 People’s right to be informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate  
5 (“TDCPP”), a toxic chemical found in padded upholstered furniture sold in California. TDCPP  
6 is a toxic chemical that is used to treat polyurethane foam, which is used as padding or  
7 cushioning in a variety of products.

8 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failures to  
9 warn California citizens about the risks of exposure to TDCPP present in and on the padded  
10 upholstered furniture manufactured, distributed, sold, and offered for sale or use to consumers  
11 throughout the State of California.

12 3. Detectable levels of TDCPP are commonly found in and on the padded  
13 upholstered furniture that Defendants manufacture, distribute, sell, and offer for sale to  
14 consumers, many of whom are infants and children, throughout the State of California.  
15 Individuals in California, including infants and children, are exposed to TDCPP when they  
16 inhale TDCPP released from padded upholstered furniture, and also when TDCPP from padded  
17 upholstered furniture accumulates in ambient particles that are subsequently touched by such  
18 individuals and brought into contact with the mouth.

19 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
20 Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
21 doing business shall knowingly and intentionally expose any individual to a chemical known to  
22 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
23 warning to such individual . . . .” (Health & Safety Code § 25249.6.)

24 5. TDCPP has been used in consumer products as an additive flame retardant since  
25 the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic  
26 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in  
27 children’s pajamas.



1 toxic exposures from consumer products; and he brings this action in the public interest  
2 pursuant to Health and Safety Code § 25249.7(d).

3 12. Defendant KOHL'S CORPORATION is a person in the course of doing business  
4 within the meaning of Health and Safety Code § 25249.11.

5 13. Defendant KOHL'S DEPARTMENT STORES, INC. is a person in the course of  
6 doing business within the meaning of Health and Safety Code § 25249.11.

7 14. Defendants KOHL'S CORPORATION and KOHL'S DEPARTMENT STORES,  
8 INC. manufacture, import, distribute, sell, and/or offer the PRODUCTS for sale or use in the  
9 State of California, or implies by their conduct that they manufacture, import, distribute, sell,  
10 and/or offer the PRODUCTS for sale or use in the State of California.

11 15. Defendants DOES 1-150 are each persons in the course of doing business within  
12 the meaning of Health and Safety Code § 25249.11(b), which manufacture, distribute, sell,  
13 and/or offer the PRODUCTS for sale in the State of California. At this time, the true names and  
14 capacities of defendants DOES 1 through 150, inclusive, are unknown to Plaintiff, who,  
15 therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure §  
16 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously  
17 named defendants is responsible for the acts and occurrences alleged herein. When ascertained,  
18 their true names and capacities shall be reflected in an amended complaint.

19 16. Defendant KOHL'S CORPORATION, Defendant KOHL'S DEPARTMENT  
20 STORES, INC., and Defendants DOES 1-150 are hereinafter collectively referred to as  
21 "Defendants."

### 22 VENUE AND JURISDICTION

23 17. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil  
24 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
25 because Plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
26 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because  
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1 Defendants conducted, and continue to conduct, business in this county with respect to the  
2 PRODUCTS.

3 18. The California Superior Court has jurisdiction over this action pursuant to  
4 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction  
5 in all causes except those given by statute to other trial courts.” The statute under which this  
6 action is brought does not specify any other basis of subject matter jurisdiction.

7 19. The California Superior Court has jurisdiction over Defendants based on  
8 Plaintiff’s information and good faith belief that each Defendant is a person, firm, corporation  
9 or association that is a citizen of the State of California, has sufficient minimum contacts in the  
10 State of California, and/or otherwise purposefully avails itself of the California market.  
11 Defendants’ purposeful availment of California as a marketplace for the PRODUCTS renders  
12 the exercise of personal jurisdiction by California courts over Defendants consistent with  
13 traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

15 **(Violation of Proposition 65 - Against All Defendants)**

16 20. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
17 Paragraphs 1 through 19, inclusive.

18 21. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
19 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
20 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
21 harm.”

22 22. Proposition 65 states, “[n]o person in the course of doing business shall  
23 knowingly and intentionally expose any individual to a chemical known to the state to cause  
24 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
25 individual . . . .” (Health & Safety Code § 25249.6.)

26 23. On January 17, 2013, Plaintiff’s sixty-day notice of violation, together with the  
27 requisite certificate of merit, was provided to KOHL’S CORPORATION, KOHL’S  
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1 DEPARTMENT STORES, INC., and certain public enforcement agencies stating that, as a  
2 result of Defendants' sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers  
3 and users in the State of California were being exposed to the LISTED CHEMICAL resulting  
4 from their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers  
5 and users first having been provided with a "clear and reasonable warning" regarding such toxic  
6 exposures, as required by Proposition 65.

7 24. Defendants have engaged in the manufacture, importation, distribution, sale, and  
8 offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6,  
9 and Defendants' violations have continued to occur beyond their receipt of Plaintiff's sixty-day  
10 notice of violation. As such, Defendants' violations are ongoing and continuous in nature, and  
11 will continue to occur in the future.

12 25. After receiving Plaintiff's sixty-day notice of violation, the appropriate public  
13 enforcement agencies have failed to commence and diligently prosecute a cause of action  
14 against Defendants under Proposition 65.

15 26. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
16 or use in California by Defendants contain the LISTED CHEMICAL such that they require a  
17 "clear and reasonable" warning under Proposition 65.

18 27. Defendants knew or should have known that the PRODUCTS they manufacture,  
19 import, distribute, sell, and offer for sale or use in California contain the LISTED CHEMICAL.

20 28. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
21 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or  
22 inhalation during reasonably foreseeable uses of the PRODUCTS.

23 29. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
24 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
25 defined by Title 27 of the California Code of Regulations, § 25602(b).

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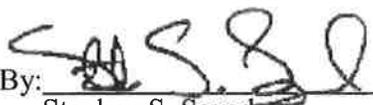
2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” as defined by Title 27 of the California Code of Regulations, § 25601 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

3. That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and

4. That the Court grant such other and further relief as may be just and proper.

Dated: March 29, 2013

THE CHANLER GROUP

By:   
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Stephen S. Sayad  
Attorneys for Plaintiff  
PETER ENGLANDER